

By: Toth

H.B. No. 5234

A BILL TO BE ENTITLED

AN ACT

relating to election integrity and security, including by preventing fraud in the conduct of elections in this state; authorizing a penalty, increasing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. This Act may be cited as the Election Accuracy, Transparency, and Accountability Act.

SECTION 1.02. Chapter 41 of the Texas Election Code is amended to read as follows:

Sec. 41.002. GENERAL ELECTION FOR STATE AND COUNTY OFFICERS. The general election for state and county officers shall be held on the first Tuesday after the first Monday in November in even-numbered years. Voting by personal appearance shall begin 8 calendar days in advance of election day culminating on election day for a total of 9 consecutive days for voting by personal appearance.

SECTION 1.03. Title 7 of the Election Code shall be amended to repeal provisions permitting and governing early voting by personal appearance.

SECTION 1.04. Chapter 42 of the Texas Election Code shall be amended as follows:

Sec. 42.006. POPULATION REQUIREMENTS. (a) Except as otherwise provided by this section, a county election precinct must

1 contain at least 100 but not more than 2,000 [~~5,000~~] registered
2 voters.

3 SECTION 1.05. Chapter 43 of the Texas Election Code shall be
4 amended as follows:

5 Sec. 43.001. ONE POLLING PLACE IN EACH PRECINCT. Each
6 election precinct established for an election shall be served by a
7 single polling place located within the boundary of the precinct or
8 adjoining precinct. More than one precinct may vote at the same
9 location provided the location is large enough to accommodate all
10 election activities as required by this code while keeping those
11 activities separate and distinct for each precinct.

12 Sec. 43.031. POLLING PLACE IN PUBLIC BUILDING. (a) In this
13 subchapter, "public building" means a building owned or controlled
14 by the state or a political subdivision.

15 (b) Each polling place shall be located inside a building.
16 The room where the election is conducted shall be used solely for
17 that purpose during the election and shall be capable of being
18 locked and secured from unauthorized access at any time an election
19 judge is not present.

20 (b-1) No voter may cast a vote from inside a motor vehicle
21 unless the voter meets the requirements of Section 64.009. A
22 violation of this section is a state-jail felony offense.

23 Sec. 43.031 (e) A polling place may not be located at the
24 residence or business location of a person who is:

25 (1) a candidate for an elective office, including an
26 office of a political party; or

27 (2) related within the third degree by consanguinity

or the second degree by affinity, as determined under Chapter 573, Government Code, to a candidate described by Subdivision (1).

(f) The polling place may not be located in a movable structure.

SECTION 1.06. Chapter 51 of the Texas Election Code shall be amended as follows:

Sec. 51.004. DISTRIBUTING SUPPLIES.

(b) The appropriate and sufficient amounts of supplies including but not limited to ballots shall be distributed to each presiding election judge not later than one hour before the polls are required to be open for voting ~~[and to the early voting clerk before the beginning of early voting]~~.

(c) In addition to any other penalty set forth in this code, failure to comply with this section or Section 51.005 by an election administrator or election officer whether or not intentional impacting more than one precinct shall result in the removal of the election administrator or election officer and the election shall be reconducted.

Sec. 51.005. NUMBER OF BALLOTS. (a) The authority responsible for procuring the election supplies for an election shall provide for each election precinct a number of ballots equal to at least the ~~[percentage]~~ number of registered voters ~~[who voted]~~ in that precinct ~~[in the most recent corresponding election]~~ plus 1 ~~[25]~~ percent of that number ~~[except that the number of ballots provided may not exceed the total number of registered voters in the precinct]~~.

Sec. 51.011. OBSTRUCTING DISTRIBUTION OF SUPPLIES. (a) A

1 person commits an offense if the person intentionally obstructs the
2 distribution of election supplies for an election.

3 (b) An offense under this section is a state jail felony
4 ~~[Class C misdemeanor]~~.

5 Sec. 51.013. IDENTIFICATION OF PRINTERS FOR PRIMARY
6 ELECTION OR GENERAL ELECTION FOR STATE AND COUNTY OFFICERS. Amend
7 to add (e), (f) and (g):

8 (e) Ballot printing services shall be procured from
9 printers located within the state of Texas.

10 (f) Chain of custody procedures including securing batches
11 with uniquely numbered seals that are logged, shall be followed
12 including documentation of such procedures by the printer from the
13 time the ballots come off the press until they are delivered
14 securely to the county elections officer. Failure of printer to
15 follow chain of custody procedures and/or produce required
16 documentation at the time of delivery of ballots shall result in
17 termination of all present and future contracts.

18 (g) Chain of custody procedures including securing batches
19 with uniquely numbered seals that are logged, shall be followed
20 including documentation of such procedures by the printer from the
21 time the ballots come off the press until they are delivered
22 securely to the county elections officer. Failure of printer to
23 follow chain of custody procedures and/or produce required
24 documentation at the time of delivery of ballots shall result in
25 termination of all present and future contracts.

26 SECTION 1.07. Chapter 52 of the Texas Election Code shall be
27 Amended to read as follows:

1 Sec. 52.0064. ACTIONS TO BE TAKEN BY RESPONSIBLE CLERK IN
2 EVENT OF MISPRINT or BALLOT PRINTING ERROR.

3 (a) In the event of a misprint or other error in printing one
4 or more ballots, such ballots must be marked "VOID" in large letters
5 across the front of the ballots. (b) Such void ballots must be
6 accounted for by ballot number, placed in locked containers with
7 numbered seals marked "VOID MISPRINTED BALLOTS" and placed in a
8 secure, locked location and retained as election records. Such
9 void ballots numbers shall be recorded as void numbers and no voided
10 ballot numbers may be used for any re-printed ballots. Strict chain
11 of custody procedures shall be followed.

12 ~~[Sec. 52.0064. DESTRUCTION OF INCORRECT BALLOTS. (a) If new~~
13 ~~ballots are prepared to make a correction on the ballot, the~~
14 ~~authority responsible for having the official ballot prepared shall~~
15 ~~destroy the incorrect ballots in the presence of: (1) the sheriff,~~
16 ~~in an election ordered by the governor or a primary election, or~~
17 ~~(2) the authority responsible for ordering the election, in any~~
18 ~~other election. (b) The authority responsible for having the~~
19 ~~official ballot prepared shall post in the authority's office a~~
20 ~~notice of the date, hour, and place of the destruction of the~~
21 ~~incorrect ballots. The notice must remain posted continuously for~~
22 ~~the 72 hours preceding the scheduled time of the destruction.~~
23 ~~(c) Any interested person is entitled to be present at the~~
24 ~~destruction of incorrect ballots. (d) The authority responsible for~~
25 ~~having the official ballot prepared shall prepare a record of the~~
26 ~~incorrect ballots that are destroyed. The authority shall preserve~~
27 ~~the record for the period for preserving the precinct election~~

1 ~~records.]~~

2 Sec. 52.061. PRINTING ON BALLOT. (a) The ballot shall be
3 designed for hand marking and shall be printed in black ink, on
4 secure, auditable, counterfeit resistant, non-encrypted paper, on
5 white or light-colored paper, but the ballot may not be the same
6 color as sample ballots. No ballot may contain any QR or bar code
7 or any other code not readable by the human eye nor may a ballot
8 contain any open or encrypted of tracking, tracing or identifying a
9 voter's ballot.

10 (c) The voting precinct number and polling location shall be
11 pre-printed on all pages of the ballot.

12 (d) Failure of the Election Administrator comply with this
13 section shall be a Class A misdemeanor.

14 Sec. 52.062. NUMBERING OF BALLOTS. The ballots prepared by
15 each authority responsible for having the official ballot prepared
16 shall be numbered sequentially and in accordance with this code,
17 with no gap in numbering, on the front and back of each ballot,
18 consecutively beginning with the number "1." No ballot in the state
19 shall have a duplicative number.

20 SECTION 1.08. Chapter 61 of the Texas Election Code shall be
21 amended as follows:

22 Sec. 61.002. CLOSING POLLING PLACE FOR VOTING.

23 ~~(c)~~ Immediately after closing the polls for voting on
24 ~~[election day]~~ the final day of voting, the presiding election
25 judge or alternate election judge shall follow the hand counting
26 procedures set forth in Chapter 61.0021 of the code. ~~[print the tape~~
27 ~~to show the number of votes cast for each candidate or ballot~~

measure for each voting machine.

Each election judge or alternate election judge present shall sign a tape printed under this section]

Sec. 61.0021 OF COUNTING ELECTION.

(a) All elections shall be conducted with full transparency and video recorded without interruption. These video recordings shall be made freely available to all interested parties and publicly posted so that they can be access by every citizen without cost or additional request. The video recordings must clearly capture the ballot selections on each ballot counted and the tabulation result associated with that ballot.

(a-1) If technically feasible, the hand counting procedure may be live streamed.

(b) The election materials including ballots, ballot boxes, and envelopes used for provisional ballots at a polling place shall be in plain view of at least one election officer from the time the polls open for voting until the precinct returns have been certified. The election materials must also have constant video recording from the time the polls open for voting until the precinct returns have been certified while ensuring no individual voter is identifiably recorded.

(c) All counting shall be done by hand at the precinct prior to transporting the ballots to any other location.

(d) Counting shall be performed by bi-partisan teams. Each team shall be assigned a reasonable number of ballots in batches and the video recording will memorialize and confirm the count. Prior to beginning the count, the video recording will begin by recording

1 a caption page. This page will define the time, date, team members,
2 supervisor members and a sample ballot. The video will conclude
3 showing the same caption page except that the caption page shall be
4 signed by the team members and the raw totals shall be listed by
5 race. This video recording shall be securely made so that it cannot
6 be altered in any way. A sufficient number of counting teams shall
7 be assembled so as to complete the count within approximately three
8 hours of the closing of the polls. These teams shall be supervised
9 by an appropriate number of supervisory teams composed of equal
10 numbers of the major political parties. At the conclusion of each
11 count, members of the counting team, supervisors and any poll
12 watchers present shall sign that the count has been completed and
13 report the totals they determined from that count.

14 (e) The public shall be provided with access to the video
15 recordings at the earliest time possible. Before the election may
16 be certified, the public shall be provided 30 days to examine the
17 video recordings for errors. Should a voter registered in the
18 county determine that the count was in error, such registered voter
19 shall notify the supervisor of elections of the error, identifying
20 the video that is in error along with the time location in the video
21 where the count was made incorrectly. The registered voter
22 reporting the error is not required to not make the report public.
23 The canvassing authority shall review the video recording in
24 question to make a determination whether the count was in error.
25 Poll watchers shall be permitted to be present during the review of
26 the video recording in question. If the error is confirmed, the
27 official results shall be corrected. Should the canvassing

authority fail to diligently correct the error prior to certifying the election, or if there is a dispute as to whether an error exists, two or more voters registered in the county are permitted to file a suit and, if they are found to be correct, the plaintiffs shall recoup their attorney's fees and costs of court associated with the suit. In addition, members of the canvassing authority who failed to correct the error shall be subject to recall and removal from their elected office upon petition of 10 registered voters of the jurisdiction, which recall shall be decided in a special election to occur within 45 days after the filing of the petition. During the interim, the members of the canvassing authority who are the subject of the recall shall be suspended from their duties until the recall results are determined.

(f) The court or jury shall make any required final determination of an error in the count utilizing the video recording of that team's count and may take testimony as required to assist in their fact finding.

(g) At the conclusion of the counting process, the caption pages of each team shall be compiled to determine the election results. The tallies from the caption pages shall be recorded on a final tally sheet and added by two members of a bi-partisan team. Poll watchers may also verify the totals. Bi-partisan team members shall sign the final tally sheet, certifying its accuracy.

(h) Mail in ballots shall be transported unopened to the precinct in which the person would have voted in person. They shall be opened at the precinct and counted with the ballots that were voted in person.

(i) At no time will the supervisor of elections, any election staff, nor any other party restore, clean-up, define, enhance, or alter a voter's submitted ballot in any way. A violation under this section is a Class A misdemeanor.

(j) The results of the hand count shall be posted on the door of the precinct for a minimum period of three days. All precinct results shall be posted by precinct, on the county website and the secretary of state's website. The presiding judge shall ensure the results are correctly posted both on the county's website and on the secretary of state's website.

Sec. 61.005. SECURITY OF BALLOTS, BALLOT BOXES, AND ENVELOPES. (a) From the time a presiding judge receives the ~~[official]~~ ballots and other election materials ~~[for an election]~~ until the closing of the polls on the final day of voting and delivery of such voting materials to the official delivery location, ~~[precinct returns for that election have been certified,]~~ the presiding judge shall take the precautions necessary to prevent access to such election materials, the ballots, ballot boxes, and envelopes used for provisional ballots, ensure that the room where the election is being conducted is locked and completely secured from unauthorized access at any time the judge or an alternate judge is not present, that the ballots both voted and unvoted are secured in a box or cabinet that is secured with a uniquely numbered seal. The numbers of such seals shall be logged on the reconciliation reports by the judge or alternate judge. ~~[in a manner not authorized by law.]~~

(b) The ballots, ballot boxes, and envelopes used for provisional

ballots at a polling place shall be in plain view of at least one election officer or secured as set forth in (a) above from the time the polls open for voting until the precinct returns have been certified.

(2) A presiding election judge commits an offense if the judge fails to prevent another person from handling a ballot box containing voters' marked ballots or an envelope containing a voter's provisional ballot in an unauthorized manner or from making an unauthorized entry into the ballot box or envelope. An offense under this subsection is a Class A misdemeanor. If the offense is committed knowingly, it shall be a third-degree felony.

(c)(1) At any time the judge suspects a security incident or breach of the equipment, the ballot box, the unvoted ballots or of any other election materials, or in the event a numbered seal does not match the number of the seal recorded by the judge the night before, the judge shall immediately segregate and secure the affected box or materials, and shall contact both the county sheriff and the county election officer and report the facts. If necessary, the county election officer shall deliver additional election materials, as needed to the precinct, within 1 hour of the initial report in order that voting may continue. The judge shall guard against unnecessary handling of breached election materials and shall preserve any evidence that may assist in any investigation. The county election officer and the sheriff shall conduct a full investigation to determine what occurred and the cause. The county election officer shall ensure that only legally cast ballots are counted. If the breach was on a voting day prior to

1 election day, the county shall post an overnight guard at the
2 polling location for the remainder of the voting period to ensure no
3 further breach occurs.

4 (c)(2) At the appropriate time and as needed, the judge
5 shall provide an affidavit of facts. The county election officer
6 shall make a full report to the county party chairs and the
7 secretary of state within 24 hours of receiving the report.

8 Sec. 61.007. UNLAWFULLY REVEALING INFORMATION BEFORE POLLS
9 CLOSE. (c) Beginning at 9:30 a.m. on each day of voting and at each
10 subsequent two-hour interval through [~~5:30 p.m.~~] the closing of the
11 polls, the presiding judge shall post written notice of the total
12 cumulative number of voters who have voted in the precinct and the
13 number of voters who have voted that day. The notice shall be
14 posted at an outside door through which a voter may enter the
15 building in which the polling place is located.

16 Sec. 61.014. USE OF CERTAIN DEVICES. (a) A person may not
17 use a wireless communication device within 100 feet of a voting
18 station.

19 (b) A person may not use any mechanical or electronic means
20 of recording images or sound within 100 feet of the entrance to a
21 voting station.

22 (c) The presiding judge may require a person who violates
23 this section to turn off the device or to leave the polling place.

24 (d) This section does not apply to:

25 (1) an election officer in conducting the officer's
26 official duties;

27 (2) the use of election equipment necessary for the

1 conduct of the election; or

2 (3) a person who is employed or serving as a watcher at
3 the location in which a polling place is located while the person is
4 acting in the course of the person's employment or service.

5 (e) Violation of this section shall be an offense that is a
6 Class C misdemeanor.

7 SECTION 1.09. Chapter 63, Election Code, is amended as
8 follows:

9 Sec. 63.003. POLL LIST. (a) A printed, physical poll list
10 containing the list of names of the voters duly registered in the
11 precinct as of the date that is 30 days in advance of election day
12 including their residence address, whether they applied for a
13 mail-in ballot, and space to indicate the information required in
14 65.003(e) shall be [maintained] kept by an election officer at the
15 precinct polling place. (a)(1) Each voter shall be required to
16 place their regular signature upon the poll list in the signature
17 space next to their name.

18 (c) An election officer shall enter each accepted voter's
19 name by hand on [the] a separate voter roster list after the voter
20 signs the poll book list [signature roster]. The voter roster form
21 shall provide space for the judge to indicate whether the voter's
22 name is a similar name to the registered name rather than the exact
23 name. The voter roster shall be kept in quadruplicate with the
24 original going in the box with the voted ballots, a copy retained by
25 the election judge, a copy retained by the alternate election
26 judge, and a copy submitted to the county clerk in the appropriate
27 closing envelope. The county clerk shall provide the list to the

1 ballot board upon request.

2 (d) If the poll list indicates a voter requested a mail-in
3 ballot, the election judge shall ensure that the process for
4 cancelling the mail in ballot is followed before allowing a voter to
5 vote. [The poll list may be in the form of an electronic device
6 approved by the secretary of state. The secretary of state shall
7 adopt rules governing the use of electronic poll lists.]

8 (e) The poll book shall include space for an election
9 officer to indicate whether a voter executed a Declaration of
10 Reasonable Impediment under Section 63.001(i).

11 Sec. 63.011. PROVISIONAL VOTING. (a) A person to whom
12 Section 63.001(g) or 63.009 applies may cast a provisional ballot
13 if the person executes an affidavit stating that the person:

14 (1) is a registered voter in the precinct in which the
15 person seeks to vote; and

16 (2) is eligible to vote in the election.

17 (a-1) A person to whom the ~~[early voting]~~ clerk was required
18 to provide a~~n~~ ~~[early]~~ voting ballot by mail under Section 86.001
19 and who did not vote [early] by mail may cast a provisional ballot
20 on election day if the person executes an affidavit stating that the
21 person:

22 (1) is a registered voter in the precinct in which the
23 person seeks to vote; and

24 (2) did not vote [early] by mail.

25 SECTION 1.10. Chapter 276.019, Election Code is amended as
26 follows:

27 Sec. 276.019. UNLAWFUL ALTERING OF ELECTION PROCEDURES. A

public official or election official may not create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by this code. (a) A violation of this section is subject to injunctive relief or mandamus as provided by this code; and

(3) (b) a knowing or intentional first offense under this section is a class A misdemeanor;

(4) (c) each offense thereafter is a state jail felony.

SECTION 1.11. Title 7 of the Election Code shall be amended to repeal provisions permitting and governing early voting by personal appearance.

SECTION 1.12. The following provisions of the Election Code are repealed:

- (1) Section 31.014;
- (2) Section 32.002(c-1);
- (3) Section 32.032;
- (4) Section 43.004(c);
- (5) Section 43.007;
- (6) Section 52.075;
- (7) Section 61.002 (a) and (b);
- (8) Section 63.0102;
- (9) Section 63.002(d);
- (10) Section 63.004;
- (11) Section 63.0102(d);
- (12) Section 64.009(f), (f-1), (g), and (h);
- (13) Section 82.003;

1 (14) Section 84.0111(c);

2 (15) Chapter 85;

3 (16) Title 8

4 SECTION 1.13. This Act takes effect September 1, 2023.